

ENTERED

February 23, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

LUCINNE VENEGAS,

Plaintiff,

VS.

SPACE EXPLORATION TECHNOLOGIES
CORPORATION, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:21-CV-054

ORDER AND OPINION

In June 2020, in the darkness before dawn, Carlos Venegas drove his wife (Lucinne) and their three children home from Boca Chica Beach. While driving down State Highway 4, they crashed into an eighteen-wheel commercial truck stopped in the middle of the road and partly turned into the intersecting road, LBJ Boulevard. The crash killed Carlos Venegas, and injured his wife and children. At the time of the accident, the truck was turning onto LBJ Boulevard en route to deliver cargo to SpaceX Corporation, which maintains a facility a short distance down the intersection where the accident occurred.

Mrs. Venegas, individually and on behalf of the estates of her husband and her minor children, filed this lawsuit against SpaceX Corporation and Dogleg Park, LLC (collectively, “Defendants”). (Am. Compl., Doc. 19) Defendants moved to dismiss the complaint on the grounds that they owed no duty to Venegas. (Motion, Doc. 22)

I

A United States Magistrate Judge recommends that the Motion to Dismiss be granted. (R&R, Doc. 27) Venegas timely filed objections (Doc. 28). The Court reviews the portions of the Report and Recommendation to which Venegas objected *de novo* and all other portions for clear error. *See* FED. R. CIV. P. 72(b)(3).

Based on the allegations within the First Amended Complaint and the applicable law, the

Court concludes that the Report and Recommendation correctly applies the law to the alleged facts. As a result, the Court overrules Venegas's objections to the Report and Recommendation.

II

Venegas requests in her Response (Doc. 25) that she "be afforded an opportunity to timely re-plead" if the Court grants the Motion to Dismiss, and she reasserts this request in her Objections (Doc. 28, 16). She does not submit a proposed Second Amended Complaint.

A court "should freely give leave [to amend a complaint] when justice so requires." FED. R. CIV. P. 15(a)(2). Consistent with this rule, a "strong presumption [exists] in favor of granting leave to amend[.]" *Ackerson v. Bean Dredging LLC*, 589 F.3d 196, 208 (5th Cir. 2009). At the same time, courts properly deny a request to amend a complaint if the proposed amendments would be futile, such as when the amended complaint would be subject to dismissal. *Ackerson*, 589 F.3d at 208; *Briggs v. Mississippi*, 331 F.3d 499, 508 (5th Cir. 2003).

The Magistrate Judge previously granted Venegas the opportunity to file her First Amended Complaint, in which she added the theory of *respondeat superior*. (See Order, Doc. 18) In her current request, she does not indicate how she would amend her First Amended Complaint, other than to "plead with particularity the circumstances" that allegedly support her causes of action. (Objections, Doc. 28, 16) But Venegas's First Amended Complaint does not lack detail. She devotes over 30 paragraphs to her factual allegations, complete with photographs and field diagrams from the accident. Her claims fail not because she pleads insufficient facts, but because the alleged facts, accepting them as true, do not support a cause of action against the defendants. As a result, the Court concludes that her requested amendments would be futile.


III

The Court **ADOPTS** the Report and Recommendation (Doc. 27). As a result, it is:

ORDERED that Defendant Space Exploration Technologies Corporation and Dogleg Park, LLC's Motion to Dismiss (Doc. 22) is **GRANTED**; and

ORDERED that Plaintiff Lucinne Venegas's causes of action are **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted.

Signed on February 23, 2022.


Fernando Rodriguez, Jr.
United States District Judge